

Introduced by Senator Battin

February 23, 2006

An act to amend Section 1363.03 of the Civil Code, relating to common interest developments, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 1560, as introduced, Battin. Common interest developments: governance.

The Davis-Stirling Common Interest Development Act governs the establishment and management of common interest developments. These provisions require that a common interest development be managed by an association and that elections related to the governance or administration of the common interest development conform to specified requirements. Existing law authorizes a member of an association to bring a civil action to enforce his or her rights and authorizes a court to impose a civil penalty of up to \$500 for a violation of the provisions governing elections.

This bill would revise provisions governing the conduct of elections in a common interest development. Among other things, the bill would require an association to adopt rules to allow one or more inspectors to appoint or oversee additional persons to count and tabulate votes, specify that a quorum shall only be required if so stated in the bylaws of the association, prohibit an association from requiring a membership meeting in regard to an election except for the election or removal of directors, and impose other requirements relating to proxies and secret ballots, as specified.

The bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1363.03 of the Civil Code is amended
2 to read:
- 3 1363.03. (a) An association shall adopt rules, in accordance
4 with the procedures prescribed by Article 4 (commencing with
5 Section 1357.100) of Chapter 2, that do all of the following:
- 6 (1) Ensure that if any candidate or member advocating a point
7 of view is provided access to association media, newsletters, or
8 Internet Web sites during a campaign, for purposes that are
9 reasonably related to that election, equal access shall be provided
10 to all candidates and members advocating a point of view,
11 including those not endorsed by the board, for purposes that are
12 reasonably related to the election. The association shall not edit
13 or redact any content from these communications, but may
14 include a statement specifying that the candidate or member, and
15 not the association, is responsible for that content.
- 16 (2) Ensure access to the common area meeting space, if any
17 exists, during a campaign, at no cost, to all candidates, including
18 those who are not incumbents, and to all members advocating a
19 point of view, including those not endorsed by the board, for
20 purposes reasonably related to the election.
- 21 (3) Specify the qualifications for candidates for the board of
22 directors and any other elected position, and procedures for the
23 nomination of candidates. A nomination or election procedure
24 shall not be deemed reasonable if it disallows any member of the
25 association from nominating himself or herself for election to the
26 board of directors.
- 27 (4) Specify the qualifications for voting, the voting power of
28 each membership, the authenticity, validity, and effect of proxies,
29 and the voting period for elections, including the times at which
30 polls will open and close.
- 31 (5) Specify a method of selecting one or three independent
32 third parties as inspector, or inspectors, of election utilizing one
33 of the following methods:
- 34 (A) Appointment of the inspector or inspectors by the board.

1 (B) Election of the inspector or inspectors by the members of
2 the association.

3 (C) Any other method for selecting the inspector or inspectors.

4 (6) *Allow the inspector, or inspectors, to appoint and oversee*
5 *additional persons to count and tabulate votes as the inspector or*
6 *inspectors deem appropriate.*

7 (b) Notwithstanding any other law or provision of the
8 governing documents, *all items legally requiring a vote of the*
9 *membership, including but not limited to, an election within a*
10 *common interest development regarding assessments, selection*
11 *and removal of members of the association board of directors,*
12 *amendments to the governing documents, or the grant of*
13 *exclusive use of common area property pursuant to Section*
14 *1363.07 shall be held by secret ballot in accordance with the*
15 *procedures set forth in this section. A quorum shall be required*
16 *only if so stated in the bylaws of the association. A secret ballot*
17 *as described in this section shall not be interpreted to be a*
18 *written ballot as described in Section 7513 of the Corporations*
19 *Code.*

20 (c) (1) The association shall select an independent third party
21 or parties as an inspector of election. The number of inspectors of
22 election shall be one or three.

23 (2) For the purposes of this section, an independent third party
24 includes, but is not limited to, a volunteer poll worker with the
25 county registrar of voters, a licensee of the California Board of
26 Accountancy, or a notary public. An independent third party may
27 be a member of the association, but may not be a member of the
28 board of directors or a candidate for the board of directors or
29 related to a member of the board of directors or a candidate for
30 the board of directors. An independent third party may not be a
31 person who is currently employed or under contract to the
32 association for any compensable services unless expressly
33 authorized by rules of the association adopted pursuant to
34 paragraph (5) of subdivision (a).

35 (3) The inspector or inspectors of election shall do all of the
36 following:

37 (A) Determine the number of memberships entitled to vote
38 and the voting power of each.

39 (B) Determine the authenticity, validity, and effect of proxies,
40 if any.

1 (C) Receive ballots.

2 (D) Hear and determine all challenges and questions in any
3 way arising out of or in connection with the right to vote.

4 (E) Count and tabulate all votes.

5 (F) Determine when the polls shall close.

6 (G) Determine the result of the election.

7 (H) Perform any acts as may be proper to conduct the election
8 with fairness to all members in accordance with this section and
9 all applicable rules of the association regarding the conduct of
10 the election that are not in conflict with this section.

11 (4) An inspector of election shall perform his or her duties
12 impartially, in good faith, to the best of his or her ability, and as
13 expeditiously as is practical. If there are three inspectors of
14 election, the decision or act of a majority shall be effective in all
15 respects as the decision or act of all. Any report made by the
16 inspector or inspectors of election is prima facie evidence of the
17 facts stated in the report.

18 (d) *(1) Proxies as described in Section 7613 of the*
19 *Corporations Code shall not be interpreted to be a secret ballot*
20 *as described in this section. An association may continue to use*
21 *and to accept proxies if permitted or required by the bylaws of*
22 *the association and if those proxies meet the requirements of this*
23 *article, other laws, and the association's governing documents,*
24 *but the association shall not be required to prepare or distribute*
25 *proxies pursuant to this section. A proxy shall not be used in lieu*
26 *of a ballot at a meeting.*

27 (2) Any instruction given in a proxy issued for an election that
28 directs the manner in which the proxy holder is to cast the vote
29 shall be set forth on a separate page of the proxy that can be
30 detached and given to the proxy holder to retain. The proxy
31 holder shall cast the member's vote by secret ballot.

32 (e) Ballots and two preaddressed envelopes with instructions
33 on how to return ballots shall be mailed by first-class mail or
34 delivered by the association to every member not less than 30
35 days prior to the deadline for voting. In order to preserve
36 confidentiality, a voter may not be identified by name, address,
37 or lot, parcel, or unit number on the ballot. The association shall
38 use as a model those procedures used by California counties for
39 ensuring confidentiality of voter absentee ballots, including all of
40 the following:

1 (1) The ballot itself is not signed by the voter, but is inserted
2 into an envelope that is sealed. This envelope is inserted into a
3 second envelope that is sealed. In the upper left hand corner of
4 the second envelope, the voter prints and signs his or her name,
5 address, and lot, or parcel, or unit number that entitles him or her
6 to vote.

7 (2) The second envelope is addressed to the inspector or
8 inspectors of election, who will be tallying the votes. The
9 envelope may be mailed or delivered by hand to a location
10 specified by the inspector or inspectors of election. The member
11 may request a receipt for delivery.

12 (f) All votes shall be counted and tabulated by the inspector or
13 inspectors of election in public at a properly noticed open
14 meeting of the board of directors or members. Any candidate or
15 other member of the association may witness the counting and
16 tabulation of the votes. No person, including a member of the
17 association or an employee of the management company, shall
18 open or otherwise review any ballot prior to the time and place at
19 which the ballots are counted and tabulated. *Once a secret ballot*
20 *is cast, it shall be irrevocable.*

21 (g) The results of the election shall be promptly reported to the
22 board of directors of the association and shall be recorded in the
23 minutes of the next meeting of the board of directors and shall be
24 available for review by members of the association. Within 15
25 days of the election, the board shall publicize the results of the
26 election in a communication directed to all members.

27 (h) The sealed ballots at all times shall be in the custody of the
28 inspector or inspectors of election or at a location designated by
29 the inspector or inspectors until after the tabulation of the vote, at
30 which time custody shall be transferred to the association.

31 (i) *Cumulative voting rights and nomination of candidates*
32 *from the floor of membership meetings or nomination by any*
33 *other manner required by the association's governing documents*
34 *shall not be affected by this section.*

35 (j) After tabulation, election ballots shall be stored by the
36 association in a secure place for no less than one year after the
37 date of the election. In the event of a recount or other challenge
38 to the election process, the association shall, upon written
39 request, make the ballots available for inspection and review by
40 association members or their authorized representatives. Any

1 recount shall be conducted in a manner that shall preserve the
2 confidentiality of the vote.

3 ~~(j)~~

4 *(k) Except for the election or removal of directors, a*
5 *membership meeting shall not be required unless required by the*
6 *governing documents of the association.*

7 *(l) The provisions of this section apply to both incorporated*
8 *and unincorporated associations, notwithstanding any contrary*
9 *provision of the governing documents.*

10 *(m) The procedures set forth in this section shall apply only to*
11 *votes cast directly by the membership, and shall not apply to any*
12 *meeting where the governing documents call for votes to be cast*
13 *or carried by delegates or other elected representatives.*

14 SEC. 2. This act is an urgency statute necessary for the
15 immediate preservation of the public peace, health, or safety
16 within the meaning of Article IV of the Constitution and shall go
17 into immediate effect. The facts constituting the necessity are:

18 In order to ensure that these changes apply to election
19 conducted by common interest developments as soon as possible,
20 it is necessary that this act take effect immediately.